



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2023-0374]

RIN 1625-AA08

Special Local Regulation; Wando River and Cooper River, Charleston and Mount Pleasant, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for the Lowcountry Splash on certain navigable waters of the Wando River and Cooper River in Charleston and Mount Pleasant, SC. This action is necessary to provide for the safety of life on navigable waters during this open water swim event. This regulation restricts persons and vessels from entering certain waters of the Wando River and Cooper River, unless authorized by the Captain of the Port (COTP) Charleston or a designated represented.

DATES: This rule is effective from 7 a.m. through 11 a.m. on May 13, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0374 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Thomas J. Welker, Sector Charleston, Waterways Management Division, U.S. Coast Guard; telephone (843) 740-3184, email

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. This regulation is typically enforced annually under § 100.704 of this part. However, this year the event will take place one week prior to the dates published in Table 1 to § 100.704. The Coast Guard and the event sponsor did not identify this change until the days before the event, therefore the Coast Guard does not have adequate time to publish an NPRM and consider public comments before the event. Furthermore, we must establish this special local regulation by May 13, 2023, because it is necessary to protect the safety of the public, and event participants in the waters of the Wando River and Cooper River during the swim event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action

is needed to protect the safety of the public, and event participants in the waters of the Wando River and Cooper River during the swim event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the Lowcountry Splash swim event on May 13, 2023, present a safety concern for participants and non-participant vessels transiting in the vicinity during the event. This rule is needed to protect participants and the general public within the regulated area during the event.

IV. Discussion of the Rule

This rule establishes a special local regulation from 7 a.m. until 11 a.m. on May 13, 2023. The special local regulation will cover all navigable waters extending 50-yards in front and behind, and 100-yards on either side of event participants and safety vessels. The duration of the zone is intended to protect participants and the general public within the regulated area during the event. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on (1) Non-participant vessels will be able to transit surrounding areas as the regulated area will only impact a small portion of the Wando River and Cooper River; (2) Non-participant vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement period if authorized by the COTP or a designated representative; (3) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Marine Safety Information Bulletin and safety information broadcast; and (4) the regulated area is limited in duration in that it will be enforced for no more than four hours.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting four hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for the Record supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 100

Harbors, Marine safety, Navigation (water), Security measures, Security.

For the reasons stated in the preamble, the Coast Guard is amending 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T07-0374 to read as follows:

§ 100.T07-0374 Lowcountry Splash, Wando River and Cooper River, Charleston and Mount Pleasant, SC.

(a) *Regulated area.* The regulations in this section apply to the following area: All waters of 50-yards in front of lead safety vessel preceding the first swim participants, 50-yards behind the safety vessel trailing the last swim participants, and at all times extending 100-yards on either side of safety vessels and swim participants. The Lowcountry Splash swim event begins on the Wando River, on Daniel Island, Charleston, SC, and finishes at the Harbor Resort Marina on the Cooper River in Mount Pleasant, SC.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Charleston (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participants in the race.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Charleston or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 843-740-7050, or a designated representative via VHF radio on channel 16. Those in the regulated area must comply with all lawful orders or directions given to

them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 7 a.m. to 11 a.m. on May 13, 2023.

Dated: May 5, 2023.

F. J. DelRosso,
Captain, U.S. Coast Guard,
Captain of the Port Sector Charleston.

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